

PCT

To:

see form PCT/ISA/220

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY
(PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/CH2004/000529

International filing date (day/month/year)
20.08.2004

Priority date (day/month/year)
02.09.2003

International Patent Classification (IPC) or both national classification and IPC
A61L9/12, A01M1/20

Applicant
GIVAUDAN SA

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☒ Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

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WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

10/569885
International application No.
PCT/CH2004/000529

IAP20 Rec'd PCT/PTO 28 FEB 2006

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

Box No. II Priority

1. ☒ The following document has not been furnished:
- ☒ copy of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(a)).
 - ☐ translation of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(b)).
- Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.
2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:

Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	2-6
	No: Claims	1
Inventive step (IS)	Yes: Claims	2-6
	No: Claims	1
Industrial applicability (IA)	Yes: Claims	1-6
	No: Claims	

2. Citations and explanations

see separate sheet

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Reference is made to the following documents:

D1: FR-A-2 522 270

D2: FR-A-2 635 955

D3: US 2002/136542 A1

- 2.1 Document D1 discloses an apparatus adapted to disseminate volatile liquid into an atmosphere (= dispositif pour la diffusion atmosphérique d'un produit). The apparatus comprises a reservoir (1) containing the volatile liquid (13), a cylindrical transfer member (= mèche, 11) and an evaporating surface (= disques évaporateur, 9) comprising a rigid sheet extending laterally from the transfer member, wherein the transfer member passes through the evaporating surface by means of a hole (see the figures) and transfers liquid from the reservoir to the evaporating surface. Even if D1 does not explicitly mention that the transfer member should be elastically compressible in diameter, from the figures the impression is gained that it is a soft wicking element. Moreover, the apparatus further comprises a support member (10) for keeping the evaporating surfaces in a fixed position to the wick.

Note that D1 does not mention that prior to putting into service of the apparatus, the transfer member should be held in a compressed form of diameter smaller than that of the hole, and of release of compression expandable into liquid transfer contact with the evaporating surface. However, this is a functional feature derived from the use of the apparatus itself and it is not suitable to limit the scope of the claim.

Therefore, the subject-matter of claim can be read from D1 (Art. 33.2 PCT).

- 2.2 As already stated in point 2.1 above, D1 does not disclose that the transfer member should be supplied in compressed form and that in putting the apparatus into service, the compression of the transfer member should be released.

Therefore, the subject-matter of the method claim 6 is novel over D1 (Art. 33.2

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PCT).

- 2.3 Note that if claim 1 would make clear that the apparatus further comprises a rigid cylindrical member to held the transfer member in compressed form prior to using it, then the subject-matter of a correspondingly amended claim 1 would be novel over D1.
- 3.1 The International application PCT/CH 2004/000102, cited in the application and having the publication number WO 2004/082726 (published after the filing date of the present application), is regarded as being the closest prior art to the subject-matter of the claims. Claim 6 solves the problem of securing the necessary liquid transfer contact between transfer member and evaporating surface avoiding the need of an exact fitting.
- 3.2 In D1 this problem does not exist, since transfer member and evaporating surface are delivered to the user already in "liquid contact".
- 3.2 Document D2 discloses an apparatus to disseminate a volatile liquid into the atmosphere (= diffuseur, 1). The apparatus comprises a reservoir (2) containing a volatile (but odourless liquid), a transfer member (= mèche, 4), and an evaporating surface (= matériau absorbant, 5) comprising a sheet. However, the transfer member does not pass through the evaporating surface by means of a hole. Furthermore, the apparatus is delivered with a cap (14) which is removed prior to using it.
- 3.3 D3 relates to the fastening of a fluid transport mechanism to a fluid reservoir to increase the effectiveness of the vaporisation units. The transfer member is elastically compressible in diameter, with a diameter in its non-compressed form greater than that of the hole. However, D3 does not disclose an evaporating surface and, consequently, the attachment of the transfer member to the evaporating surface.
- 3.4 None of the remaining cited prior art documents provides any indication or suggestion to arrive at the proposed solution.

Therefore, the subject-matter of claim 6 involves an inventive step (Art. 33.3 PCT).

Re Item VIII

Certain observations on the international application

1. Some of the features in the apparatus claim 1 relate to a method of using the apparatus rather than clearly defining the apparatus in terms of its technical features. The intended limitations are therefore not clear from this claim, contrary to the requirements of Article 6 PCT. See also Re Item V, point 2.1.